circumstances that would lead the EEOC to believe that the complaining party sought 'to activate the Act's machinery.'" Diez v. Minnesota Mining & Mfg. Co., 88 F.3d 672, 676 (8th Cir. 1996) (quoting Steffen v. Meridian Life Ins. Co., 859 F.2d 534, 542 (7th Cir. 1988), cert. denied, 491 U.S. 907 (1989); see also Bost v. Federal Express Corp., 372 F.3d 1233, 1240 (11th Cir.), cert. denied, --- U.S. ---, 125 S.Ct. 656 (2004) (examining whether "the circumstances of the case would convince a reasonable person that the charging party manifested her intent to activate the administrative process") (internal citations omitted); Bailey v. United Airlines, 279 F.3d 194, 199 n.2 (3rd Cir. 2002) (citing Michelson v. Exxon Research & Eng'g. Co., 808 F.2d 1005, 1010-11 (3rd Cir. 1987) and holding that plaintiff's "intake questionnaire was not adequate to constitute a charge"). This Court has underscored the propriety of this line of cases by denying petitions for certiorari with respect the Seventh Circuit's Steffen opinion and Eighth Circuit's Bost opinion. See Steffen, 859 F.2d at 542, cert. denied, 491 U.S. 907; Bost, 72 F.3d at 1240, cert. denied, 125 S.Ct. 656. And, not surprisingly, this approach results in different outcomes in different factual settings. Compare Bost, 372 F.3d at 1241 (finding a questionnaire was not a charge where the undisputed evidence showed that plaintiff "clearly understood that the intake questionnaire was not a charge"); and Diez, 88 F.3d at 677 (finding that a questionnaire was not a charge where there was no evidence that plaintiff was "led . . . to believe that he had done all that was necessary once he returned the questionnaire") with Steffen, 859 F.2d at 544 (finding that a questionnaire was the equivalent of a charge where "the EEOC informed [plaintiff] that it would be treating the Intake Questionnaire as a charge but then failed to treat it as a charge").

Other circuits, while perhaps not as explicit in their standards as the above-listed circuits, have similarly examined the facts and circumstances surrounding the filing of an intake questionnaire to determine whether it constituted a charge of discrimination in a given case. See, e.g., Persik v. Manpower, Inc., 85 Fed.Appx. 127, 131 (10th Cir. 2003), cert. denied, 541 U.S. 1086, reh'g. denied, --- U.S. ---, 125 S.Ct. 18 (2004) (noting that the intake questionnaire in the case warned that "COMPLETING THIS QUESTIONNAIRE DOES NOT CONSTITUTE THE FILING OF A CHARGE" and holding that "[u]nder the circumstances, the charge . . . eventually filed did not relate back to the date of the questionnaire"); Price v. Southwestern Bell Tel. Co., 687 F.2d 74, 78-79 (5th Cir. 1982) (finding a questionnaire to be a charge where the EEOC "at least at the initial stages of the proceedings, considered the circumstances surrounding the receipt" of the document); cf. Waiters v. Robert Bosch Corp., 683 F.2d 89, 91-92 (4th Cir. 1982) (holding that an affidavit functioned as a charge where "the plaintiff attempted to file a charge of discrimination on several occasions" but was precluded from doing so, in part because the relevant EEOC office was "burglarized and [his] file was lost"). This fact-based approach is consistent with Bost, Bailey, Diez, and Steffen.

Here, although its unpublished footnote is possibly less clear than it could have been, the Sixth Circuit's reasoning appears likewise consistent. Notably, the Sixth Circuit cited the Eighth Circuit's Diez opinion, placing the Sixth Circuit within the above-noted line of cases. (Pet'r. App. 13a n. 7.) Moreover, like other circuits, the Sixth Circuit grounded its decision in the facts of this case -- such as "the letter plaintiffs received in November 2000, which informed them of the 300-day charge filing limit," and "the fact that plaintiffs subsequently filed a formal charge," which "indicates that

they understood the difference between a complaint and a formal charge." (Id.) See also Bost, 372 F.3d at 1241; Diez, 88 F.3d at 677.

For their part, Petitioners' cases do not demonstrate a conflict between the Sixth Circuit's decision and those of other circuits. Indeed, while Petitioners place great reliance (Pet'r. App. 8-10) on Steffen, the Seventh Circuit in that case rejected the very proposition that Petitioners now espouse. See 859 F.2d at 542-43 (adopting the fact-based analysis set forth above and rejecting as "overly-simplistic" the contention that a completed intake questionnaire automatically constitutes a charge if it names a respondent and generally alleges discrimination); see also Downes v. Volkswagen, Inc., 41 F.3d 1132, 1138 (7th Cir. 1993) (citing Steffen and holding that an intake questionnaire constitutes a charge only if the facts "would convince a reasonable person that the plaintiff manifested an intent to activate the Act's machinery") (discussed at Pet'r. App. 9-10). Similarly, and as noted above, the Fifth Circuit in Price, 687 F.2d at 78-79 (discussed at Pet'r. App. 10) based its decision on the facts and circumstances of the case before it, not a general rule that completed intake questionnaires constitute charges of discrimination.

Moreover, the Ninth Circuit's decision in Casaventes v. California State Univ., 732 F.2d 1441 (9th Cir. 1984) (discussed at Pet'r. App. 12-13) is distinguishable from the present matter. Central to that court's decision was the fact that the plaintiff acted pro se. Id. at 1442. Here, however, Dorn stated on his intake questionnaire that he had previously contacted "Cureton Caplan Attorneys at Law," who "advised that we had a discrimination case [and] to pursue case with EEOC." Further, there is no indication in the Casaventes case that, as here, the EEOC had sent the plaintiff a letter

detailing the applicable statute of limitations and instructing that it was plaintiff's responsibility to file a timely charge of discrimination. GM and Delphi are unaware of any case in which the Ninth Circuit has considered the question presented on facts similar to those in this case.

Finally, Petersen v. City of Wichita, 888 F.2d 1307 (10th Cir.), cert. denied, 495 U.S. 932 (1989) (discussed at Pet'r. App. 12) is inapposite. That case addressed whether, under Title VII, a verified charge of discrimination related back to an earlier, unverified charge. Id. at 1308. In that case, it was "undisputed" that the plaintiff's earlier filing constituted a charge of discrimination. Id. The court thus did not address the question presented in this case and, as previously noted, the Tenth Circuit recently held that an intake questionnaire did not constitute a charge of discrimination on facts similar to those in this case. See Persik, 85 Fed. Appx. at 131-32.

In sum, Petitioners have not presented this Court with a compelling reason to review the Sixth Circuit's ruling concerning Dorn's intake questionnaire, and this Court should deny Petitioners request for certiorari on this issue.[3]

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[3] Certiorari should be denied with regard to GM for the additional reason that both the district court and the Sixth Circuit held that Dorn did not file even a belated charge of discrimination with respect to GM. Petitioners have not sought to challenge this conclusion.

II. PETITIONERS HAVE NOT ARTICULATED A COMPELLING REASON TO JUSTIFY REVIEW AS TO THE VALIDITY OF PETITIONERS' RELEASES

The Sixth Circuit also rejected Petitioners' contention that, under the totality of the circumstances in this case, their releases are void under an "economic duress" theory. (Pet'r. App. 6a-10a.) Petitioners again proffer no compelling reason (Pet'r. App. 14-20) for the Court to review this determination.

As an initial matter, Petitioners concede that the Sixth Circuit's position on economic duress "seems to be shared by all Circuits." (Pet'r. App. 14.) Petitioners thus do not, and cannot, identify a conflict among the circuits on this issue.

Furthermore, Petitioners are incorrect in their apparent contention (Pet'r. App. 18) that the Sixth Circuit failed to consider their arguments below. While the Sixth Circuit acknowledged (Pet'r. App. 8a-9a) Petitioners' admissions that: 1) they had the experience, background, and education to comprehend their releases, 2) they had time to consider the releases and consult an attorney, 3) the releases were clear, and 4) Petitioners received consideration for their releases, the appeals court went on to recognize (Pet'r. App. 9a) Petitioners' claim "that under the 'totality of the circumstances,' they must be understood to have been coerced into signing the Release, because they were forced to choose between signing it and simply being fired without benefits." The court noted that it had "rejected a nearly identical argument" in Adams v. Philip Morris, Inc., 67 F.3d 580, 583 (6th Cir. 1996). In that case, as here, the plaintiff had argued that his release should be disregarded because "he 'was forced to sign the general release' out of 'extreme economic duress,'" but the Sixth Circuit found that "[a]though he

certainly felt some economic pressure to accept the attractive settlement package" he was offered, "this pressure does not rise to the level of economic duress." Id. In the present matter, the Sixth Circuit found no cause to rule differently. (Pet'r. App. 9a (holding that "recognizing economic duress in situations like those in Adams and the present case would invalidate most, if not all, releases of claims in agreements conferring severance benefits on employees").) Petitioners cite no authority from this Court or any other that would serve to discredit this reasoning.

CONCLUSION

This Court should deny the Petition in its entirety.

Respectfully submitted,

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